



December 24, 2002

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh St., S.W.
Washington, D.C. 20590-0001

Re: Comments on Notice of Proposed Rulemaking
Docket # FAA-2002-13378

To the Honorable Secretary Mineta:

On behalf of the Animal Legal Defense Fund ("ALDF") and its 100,000 members nationwide, we write to thank the Department of Transportation and the Federal Aviation Administration, for proposing the rule referenced above to implement Section 710 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("Section 710"), enacted in 2000, at 106 P.L. 181, 114 Stat. 61. Until a final rule is implemented, an important Congressional mandate will not have been carried out. That mandate is for passenger airlines to begin meaningfully reporting to the public, and holding themselves accountable for, all incidents involving the loss, injury, or death of animals during air transport. ALDF and its members urge you to act quickly in finalizing this rule and putting Section 710 into action.

ALDF has been involved in the field of animal law, and has focused its efforts on the proper treatment of animals, for over twenty years. Like Congress and the rest of the public, ALDF and its members are concerned with the proper treatment of animals by public carriers. Our comments to the Secretary are informed by years of experience and a firm understanding of the issues presented in this rulemaking. ALDF is dedicated to continued work with government agencies to ensure protection of animals transported by air. We therefore welcome this opportunity to provide these comments.

Section 710 was enacted to address a significant and longstanding concern about the safety of animals during air transport. After hearing from its constituents about dangerous airline cargo holds and the often deadly treatment of animals while in air transit, Congress enacted

Section 710 (passed unanimously by the Senate). Section 710 requires air carriers to provide air travelers with timely and accurate reporting of the loss, injury, or death of animals during air transport. By mandating that airline customers have access to timely, reliable, and complete data concerning which airlines have the best (and worst) records for the transportation of animals, Section 710 allows these customers to make informed decisions about whether or not to transport their animals by air and, if they do decide to transport them, which carrier to use. Section 710 also requires the Secretary of Transportation to work with air carriers to improve the training of airline personnel entrusted with animal care. Section 710 therefore increases the protections afforded animals traveling by air both directly and indirectly, while also directly increasing airline accountability to the public.

Definition of “Animal.”

ALDF is concerned that the definition of “animal” in the rule that has been proposed to implement Section 710 restricts “animals” to “pets” domiciled in “family households” in the United States (or animals intended for such domiciles). This proposed definition undermines Section 710 and contravenes the intent of Congress because it eliminates a significant group of incidents that must be reported if Section 710 is to fulfill its purposes. Congress has expressed concern, for many years, about the repeated losses, injuries, and deaths of animals during air transportation, regardless of the individual animal’s status or ultimate destination. Through Section 710, Congress demonstrated this concern by determining it was important public policy to better protect animals during air transport. To that end, Congress provided a mechanism whereby air travel consumers could make informed decisions about transporting their animals by air and Secretary of Transportation would work with airlines to improve the training of their personnel in the safe and humane treatment of animals during air transport.

The animals that are “pets” (as defined by the proposed rule) are cared for by the same airline personnel, travel in the same cargo holds, and are subjected to the same environmental conditions, as animals that are not “pets.” These non-pets could be traveling to and from dealers, farms, zoos, circuses, or research laboratories. Because all of these animals are treated the same by the airlines, it is only logical that *any* air-transport injury to *any* animal suggests a potential danger for pets. Congress wanted its constituents to be able to make an informed decision about

these potential dangers. It, therefore, would be irrational to restrict the information available to consumers based on where an animal lives, or its species, rather than the treatment the animal receives while entrusted to the care of passenger airlines.¹ The treatment of animals is the only pertinent parameter, and thus all incidents of loss, injury or death of animals should be reported under the rule.

Definition of “Incident.”

ALDF also is concerned about the request, in a number of comments, that the reporting requirements in the proposed rule be limited to only those in which the owner or shipper of the lost, injured, or killed animal files a formal complaint. Regardless of how “animal” ultimately might be defined, this additional restriction would further diminish the protections provided to animals as well as the public’s right to timely, reliable, and complete data concerning the treatment of animals by the various airlines. If an animal dealer transports fifty puppies by air on a monthly basis, and one, two, or even three or four of the puppies die, that dealer might not file a complaint – assuming she or he knows how to do so – for any number of reasons. But, the individual citizen transporting her or his one beloved animal companion would, of course, want to know about the deaths of those four puppies before determining whether to patronize the same airline. Thus, it would be irrational to conclude that the mandate and purposes of Section 710 could be carried out if all incidents involving the loss, injury, or death of an animal during air transportation were not reported – regardless of whether an affected owner or shipper has the ability and desire to file a formal complaint. Moreover, the proposed rule requires the airline at issue to report the cause of the incident, and the corrective action it has taken in response to the incident. Limiting the definition of incident in the manner suggested by some commenters could discourage such corrective action, and thus further undermine Section 710. Accordingly, ALDF urges the Secretary to maintain the requirement that every incident of loss, injury, or death be reported.

Improved Training of Airline Personnel.

Finally, ALDF notes the absence of any provision in the proposed rule implementing the Congressional mandate that “[t]he Secretary shall work with air carriers to improve the training of employees with respect to the air transport of animals and the notification of passengers of the

¹ Some comments have suggested even further restricting the proposed definition of animal so that only incidents involving pet dogs and cats would be reported. Like the current proposal, these suggestions are directly contrary to the expressed intent of Congress in enacting Section 710. Even if the proposed pet restriction were to remain unchanged, there is no reason to consider eliminating the pet birds, rabbits, hamsters, fish, and reptiles, for example, that are common to so many United States households.

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conditions under which the air transport of animals is conducted,” found at 106 P.L. 181, 114 Stat. 61 (2000). This aspect of the statute, when implemented, will further reduce the number of tragedies involving animals during air transport and increase public awareness of the conditions in which animals are transported by air. ALDF looks forward to reviewing and commenting on the Secretary’s proposed training rule, and in assisting in its expeditious implementation.

In closing, ALDF additionally agrees with and supports the comments made by the Humane Society of the United States, American Society for the Prevention of Cruelty to Animals, Doris Day Animal League, Animal Welfare Institute, Society for Animal Protective Legislation, International Primate Protection League, Massachusetts Society for the Prevention of Cruelty to Animals, American Humane Association, Animal Protection Institute, and Fund for Animals.

We appreciate the opportunity to comment on this important proposed rule.

Sincerely,

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